

Application No.: 08/849,404  
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Applicants have canceled Claims 20 and 21, reserving the right to file a divisional application to the subject matter contained therein.

Non-statutory Double Patenting

Claims 20-21 and 22-30 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-2 and 4 of US 6,025,184, issued 15 February 2000. Applicants traverse the rejection.

Applicants have canceled Claims 20 and 21, drawn respectively to a cosmid and a transformed microorganism containing that cosmid.

The remaining Claims 23-30 are species claims relative to Claims 1-2 and 4 of US 6,025,184. Both the patent and the application claim the same priority date, having been filed within a year of each other. The inventive entities of the '184 patent and of the pending application are identical. Claims 23-30 are drawn to compositions dominated by the cited issued claims. In particular, Claims 24-30 are drawn to specific deposited microorganisms of specific genera that contain the claimed cosmid.

The particular deposited strains of the instant Claims 24-30 fall under the umbrella of the issued claims. Applicants agree that the pending claims are not identical with the issued claims of the '184 patent. Both the instant patent application and the cited US 6,025,184 trace their lineage to a common parent, Appl. No. 08/440,293, filed 12 May 1995, now US Pat 5,686,276, issued 11 November 1997. As the Examiner points out, the priority case included any host bacterium comprising the 35 kb fragment and contemplated (col. 11, line 14 through col. 12, line 61 of US 6,025,184) that other specific hosts can be used in the invention.

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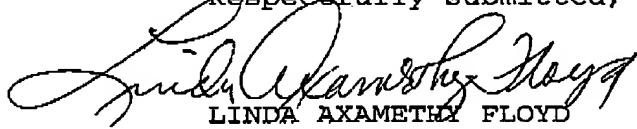
It is true that Applicants contemplated that a wide range of cells may be used in the present invention. However, the subject matter of the pending claims was not disclosed in the '184 patent and so could not have been so specifically claimed as in the pending claims. In these claims, the cosmid has been transformed into *Psuedomonas sp.*, *Pichia pastoris*, *Saccharomyces cereuisiae*, *Bacillus licheniformis*, *Bacillus subtilis*, *Streptomyces lividans*, and *Aspergillus niger*.

Applicants maintain that the subject matter of pending Claims 23-30 are patentably distinct. The Examiner is respectfully requested to reconsider the claims as amended, withdraw the rejection for double patenting, and allow the claims.

The undersigned regrets any inconvenience to the Examiner with regard to this issue. Applicants do intend to file a terminal disclaimer as suggested. However, an inconsistency in the assignment record requires attention to permit this to be filed. The undersigned regrets the delay.

In view of the foregoing, a Third Request for Continued Examination is filed concurrently.

Respectfully submitted,



LINDA AXAMETHY FLOYD  
ATTORNEY FOR APPLICANTS  
REGISTRATION NO. 33,692  
TELEPHONE: 302-892-8112  
FACSIMILE: 302-992-5374

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